IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1847 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JASHWANTSINH PARTHESINH LAVANA

Versus

AMC

Appearance:

MR SHASHIKANT S GADE for Petitioners

MR PRASHANT G DESAI for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 14/06/2001

ORAL JUDGEMENT

Petitioner No. 1 is a physically handicapped person. Hence, petitioner No. 1 and his wife, petitioner No. 2 herein, were granted the agency for distributing milk of Abad Dairy which was earlier run by the Ahmedabad Municipal Corporation. The Dairy came to

be transferred to the Gujarat Dairy Development Corporation Ltd. Hence, the petitioners started distributed milk being produced by the said Dairy Development Corporation and its subsidiaries. According to the petitioners, Uttam Dairy whose milk the petitioners are presently distributing is a subsidiary of the Gujarat Dairy Development Corporation.

2. In the present petition, the petitioners have challenged the threatened removal of the cabin being Kendra No. 556, Near Mathuresh Bhavan, Opp. Sujata Flats, Shahibaug. The petitioners have contended that when the Dairy Development Corporation had taken over the Diary, all the persons distributing milk being produced by any subsidiary of the Gujarat Dairy Development Corporation are also entitled to continue to occupy the cabins.

3. In response to the Rule issued by this Court, affidavit in reply has been filed by the Estate Officer of the Ahmedabad Municipal Corporation stating that initially the Ahmedabad Municipal Corporation was running a municipal dairy which came to be sold off to the Gujarat Dairy Development Corporation on 28.12.1979. Initially, the cabins were allotted for the purpose of distribution of milk produced by Abad Dairy which was run by the Corporation. All such cabins constructed by the Corporation were not sold to the Gujarat Dairy Development Corporation Ltd., but the Dairy Development Corporation was to pay licence fees to the Corporation for using such cabins for the limited purpose of selling dairy products only and the policy decision to that effect was taken by the standing committee as per its resolution No. 197 dated 20.4.1983 and was approved by the general body of the Corporation vide resolution No. 265 dated 28.6.1983. It is stated that however the Gujarat Dairy Development Corporation Ltd. did not pay any licence fees to the Corporation in spite of several attempts made by the Corporation. It is also stated that such licence fees work out to an amount of more than Rs.15 lacs. It is, therefore, submitted that in view of the above the Corporation is entitled to cancel the licence and also to remove the cabins. The Dairy Development Corporation Ltd. has challenged the notice to the aforesaid effect issued by the Corporation on 25.9.1997 by filing Civil Suit No. 1994 of 1998 before the City Civil Court at Ahmedabad. The notice of motion filed in the said suit has been rejected by the City Civil Court on 23.12.1998. The Corporation has accordingly informed the Dairy Development Corporation on 20.7.1999 about the aforesaid development and called upon

the Dairy Development Corporation to clear the entire dues upto 31.3.1999 failing which the cabins will be removed. It is further stated that the Corporation has removed about 50 to 80 such cabins which are on the footpath and on the public road and which are causing nuisance to the traffic.

4. The learned counsel for the petitioners submits that the petitioners are prepared to pay the licence fees in respect of the particular cabin being occupied by the petitioners for the purpose of selling dairy products and that the petitioners would, therefore, like to make a representation to the respondent Corporation pointing out all the relevant facts so as to persuade the Corporation to continue the petitioners' occupation of the cabin in question on leave and licence basis particularly because petitioner No. 1 is a physically handicapped person and, therefore, petitioner No. 1 and his wife, petitioner No. 2, have no other means of livelihood.

5. In case the petitioners make such a representation by 30.6.2001, the respondent Corporation shall consider the same as expeditiously as possible. Till the representation is decided and for a period of two weeks thereafter, the respondents shall not remove the cabin in question.

6. The petition is accordingly disposed of in terms of the aforesaid directions. Rule is made absolute to the aforesaid extent only with no order as to costs.

(M.S. Shah, J.)

sundar/-